



1 amended that complaint to add state causes of action. Both complaints included a declaration by  
2 Plaintiff describing the relevant facts to the action.

3 All defendants (“Defendants”) have failed to file any affidavits to this date, but rather the  
4 Defendants just continue to misstate the facts in Plaintiff’s complaint.

5 On June 1, 2023, Defendants filed a motion to dismiss (ECF No. 15), and on October 23,  
6 2023, Gordon ordered summary judgment (ECF No. 44, 3-4) on several of Plaintiff’s claims  
7 without a Rule 56 notice, contrary to law and facts.

### 8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 In Plaintiff’s undenied complaint, Branden Bourque (“Bourque”) admitted to ordering  
10 Plaintiff away from “Jane” because Plaintiff was recording the interaction. (ECF No. 15, ¶23,  
11 “She deserves privacy. This is not your business.”) Bourque’s orders for DeCastro to step back  
12 were clearly to control what news Plaintiff could gather, and not for officer safety nor a lawful  
13 order requiring Plaintiff’s cooperation (ECF No. 13, ¶46). Further, Plaintiff has alleged that even  
14 if Bourque had probable cause to arrest him, that Bourque doesn’t typically arrest for that (ECF  
15 No. 13, ¶53), which was ignored by Gordon in his motion to require probable cause for success  
16 of Plaintiff’s claims. **Gordon made a jury’s decision by finding probable cause for**

17 **“obstruction” based on the facts in the complaint, which did not say that Plaintiff was**  
18 **obstructing**. Nothing was represented other than a consensual encounter in a privately owned  
19 parking lot (ECF No. 21, 3:22 – 4:7) where Plaintiff was exercising his rights. Finding otherwise  
20 and dismissing false arrest claims without prejudice shows an appearance of bias.

21 Further, Defendants argued “qualified immunity” without specificity (ECF No. 15, 9:4 –  
22 10:13; ECF No. 27, 7:19 – 9:4). At no time does Borque state which rights violations of his he  
23 believes are protected by qualified immunity, making it impossible for Plaintiff to provide case

1 law showing that it's clearly established. Which is why qualified immunity is more appropriate  
2 for summary judgment (ECF No. 44, 5:1-5) and why Plaintiff attacked the alleged affirmative  
3 defense at ECF No. 37, 3:11-16 and at ECF No. 27, 7:19 – 9:15. Since a complaint isn't required  
4 to state case law, finding that qualified immunity can be resolved at the motion to dismiss stage  
5 if it can be determined, "based on the complaint itself, that qualified immunity applies" (ECF No  
6 44, 6:10-12), and then finding qualified immunity in the complaint because plaintiff "has pointed  
7 to no clearly established law" (ECF No. 44, 7:12) shows an appearance of bias. Especially ruling  
8 that the claim is dismissed with prejudice because Plaintiff has not pointed to any clearly  
9 established law, even though Plaintiff did point to law in his reply to the motion to dismiss at  
10 ECF No. 27, 7:19 – 9:15.

11 Also, a *pro se* party's claims should only be dismissed if there is no way that it could be  
12 amended to point to that clearly established law (ECF No. 27, 12:10-18), yet Gordon clearly  
13 points out that the complaint could have been amended to include the missing law. Gordon does  
14 this by referencing that it was missing, not that it doesn't exist, in another appearance of bias.

15 Gordon would have had to look at the constitutional violation (which was not "being  
16 arrested for not taking additional unnecessary steps back", but rather first and fourth amendment  
17 violations) and determine if they were clearly established, which Gordon did not. It is clearly  
18 established. (ECF No. 27, 9:5 – 15), and Plaintiff notified Bourque of the violations before the  
19 arrest (ECF No. 13, ¶23). This clearly shows the appearance of bias.

20 Further, Gordon finds that Bourque had discretionary immunity under state law due to the  
21 bad law that Defendants cited at ECF No. 15, 10:15 – 11:4, even though Plaintiffs correct  
22 Defendants' error at ECF No. 27, 9:16 – 23, which Gordon is aware of when he said it in his  
23 other case Mitchell v. City of Henderson, No. 2:13-cv-01154-APG-CWH, 2017 U.S. Dist.

1 LEXIS 102793, at \*27-28 (D. Nev. July 3, 2017). This shows an appearance of bias.

2 Gordon also states that “DeCastro asserts that he has brought state constitutional claims.  
3 ECF No. 27 at 5-6. But no such claims are pleaded. ECF No. 13.” Gordon is himself misstating  
4 my pleadings. The state constitutional claims are clearly pled throughout the complaint by stating  
5 facts that apply to those claims and listing the claims (i.e. ECF No. 13, 11:7-9). This shows an  
6 appearance of bias.

7 Gordon *sua sponte* finds many reasons to question the plausibility of Plaintiff’s claims  
8 (ECF No. 44), although the Defendants have not and are clearly on notice. This shows an  
9 appearance of bias.

10 In accordance with 28 U.S. Code § 455(a), which mandates that a judge must disqualify  
11 themselves in any proceeding in which their impartiality might reasonably be questioned, I  
12 respectfully request the immediate recusal of Andrew P. Gordon from this case. It is imperative  
13 to uphold the integrity of the judiciary and ensure a fair trial, in the interest of justice, for all  
14 parties involved.

15 I declare under penalty of perjury, that the foregoing is true and correct.

16 DATED: November 14, 2023

Respectfully submitted,

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19 Jose DeCastro  
Pro Se Plaintiff